

REMARKS

Upon entry of the present response, claims 1-23 will remain pending.

In order that the record is complete, Applicants note that in the previous response claim 2 was amended to remove a comma, and the Listing of Claims indicated "Previously Presented" as a claim identifier for claim 2. The current Listing of Claims is presented for the convenience of the Examiner and includes claim 2 with the comma removed.

Reconsideration of the rejections of record and allowance of the application in view of the following remarks are respectfully requested.

Claim of Foreign Priority

Applicants once again request that the next communication from the Patent and Trademark Office include the complete indication that the certified copy of the priority application has been received in this national stage application.

Information Disclosure Statement

Applicants submitted another copy of the Form PTO-1449 with their Amendment Under 37 C.F.R. 1.111, filed July 29, 2008, requesting that the Examiner confirm consideration of DE 102 16 502, which had been crossed through without any explanation as to why the document has been crossed through. It was noted that DE 102 16 502 had been accompanied by family member WO 03/084501 which includes an English language abstract, and the Examiner has indicated consideration of this family member document. Accordingly, Applicants submitted another copy of the Form PTO-1449, and requested that a completely initialed copy of the form be included with the next communication from the Patent and Trademark Office.

P27849

In the present Final Office Action, an initialed copy of the Form PTO-1449 has been attached. However, this initialed copy of the form is inconsistent with the previously initialed form, and DE 102 16 502 is still crossed through.

As to the inconsistency, Applicants note that the presently initialed form indicates "abstract only" for DE 19937917, WO 03/084501 and CA 2072754.

Regarding DE 102 16 502, Applicants notes that this document is cited in the International Search Report, and a copy of the International Search Report in English has been submitted. Accordingly, this document must be considered. In this regard, the Examiner's attention is directed to MPEP 609.03 which requires the Examiner to consider the information cited in an International Search Report in a national stage application, and MPEP 609.04(a), section III which indicates that,

Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office. This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely an "X", "Y", or "A" indication on a search report.

Regarding DE 19937917, this document was cited in a German Search Report for the counterpart German application, and its consideration is therefore required.

Regarding WO 03/084501, the International Search Report indicates that it is a family member of DE 102 16 502 and its consideration is therefore required.

Regarding CA 2072754, this document is in English and consideration of the entire document is required.

Moreover, as the documents have been indicated to have been considered by the Examiner in the previous Office Action by the inclusion of the initialed copy of the Form PTO-

P27849

1449, it is improper to presently return an inconsistent form which indicates only consideration of the abstracts for these documents.

Accordingly, Applicants are once again submitting another copy of the Form PTO-1449, and request the forwarding of a completely initialed form with the next communication from the Patent and Trademark Office.

Response To Rejection Under 35 U.S.C. 112, Second Paragraph

In response to the rejection of claims 1-3, 10 and 11 under 35 U.S.C. 112, second paragraph, as being indefinite, Applicant submits the following.

In response, Applicants once again note Applicants are not using Markush language in the claims, and are using open claim language.

The rejection does not indicate why the claims are considered to be indefinite, and merely asserts that the claims should include closed language. However, alternative language is acceptable and definite, as see, for example, MPEP 2173.05(h) Alternative Limitations II. "OR" TERMINOLOGY, wherein it is indicated that, "Alternative expressions using "or" are acceptable, such as "wherein R is A, B, C, or D." The following phrases were each held to be acceptable and not in violation of 35 U.S.C. 112, second paragraph in *In reGaubert*, 524 F.2d 1222, 187 USPQ 664 (CCPA 1975): "made entirely or in part of"; "at least one piece"; and "iron, steel or any other magnetic material."

Thus, various forms of alternative language are acceptable where the claim scope is definite.

Applicants submit that the claims are definite and are in compliance with 35 U.S.C. 112, second paragraph, so that the rejection of record should be withdrawn.

Accordingly, withdrawal of the rejection is requested.

Response To Art-Based Rejections

The following rejections are set forth in the Office Action.

(a) Claims 1-4, 6-13, 17, 18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,668,422 to Malik et al. (hereinafter "Malik") in view of EP 0 559 375 to Hagan et al. (hereinafter "Hagan").

(b) Claims 1, 2, 4, 5, 8 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,668,422 to Malik in view of EP 0 559 375 to Hagan, and further in view of U.S. Patent No. 5,883,059 to Furman et al. (hereinafter "Furman").

(c) Claims 1, 2 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,668,422 to Malik in view of EP 0 559 375 to Hagan, and further in view of U.S. Patent No. 6,641,825 to Scholz et al. (hereinafter "Scholz").

Applicants again note that the rejection references Example 15 of Malik as being close to that recited by Applicants. However, the referenced Example 15 of Malik includes as active ingredients, sodium alpha olefin sulfonate 8 wt%, sodium lauryl sarcosinate 3 wt%, cocoamido monoethanol amine 3 wt%, octadecyl maltoside (D.P. = 2) 3 wt%, ammonium chloride 2 wt%, and water 81 wt%.

Therefore, the embodiment that is referenced in the rejection as being close to Applicants' recited subject matter includes a total surfactant concentration of 17 wt%. In contrast, Applicant's claimed subject matter includes a total surfactant concentration of the composition of 3 to 15 % by weight. Accordingly, Malik does not teach or suggest a composition as recited in Applicant's claim 1, and further defined in Applicant's dependent claims.

Moreover, the rejection references column 2, line 62-column 3, line 14 of Malik.

However, as previously noted by Applicants, column 2, lines 58-62, of Malik discloses, "It has now been discovered that nonionic glycoside surfactants, when properly formulated with certain other ingredients as hereinafter discussed, are eminently well suited for use in liquid hand-soap and bubble bath compositions." (Emphasis added.) Following this disclosure of properly formulated compositions, Malik discloses that there is provided in accordance with his invention a liquid detergent composition which is suitable for use as a liquid hand-soap or bubble bath product and which comprises, on a total composition weight basis:

- a. from about 3 to about 30 weight percent of a glycoside surfactant;
- b. from about 1 to about 20 percent of a nonionic foam boosting surfactant, said foam boosting surfactant constituting about 50 weight percent or less of the total surfactant content of said composition; and
- c. up to about 95 weight percent water.

Malik discloses, beginning at column 3, line 15, that, "An especially preferred embodiment hereof is one in which an amphoteric surfactant is employed as the aforementioned auxiliary surfactant and wherein the resulting detergent composition is substantially free of anionic surfactant ingredients (e.g. which contains less than about 2, preferably less than about 1, weight percent of an anionic surfactant on a total composition weight basis). Unlike presently available commercial liquid hand-soaps which employ anionic surfactant materials and which typically require the use of moisturizing additives or ingredients, the compositions of this latter, especially preferred embodiment do not contain an anionic surfactant ingredient and do not require the use of moisturizing ingredients or additives."

Moreover, each of the Examples of Malik appears to have a total surfactant concentration higher than Applicant's recited 15 wt% total surfactant concentration.

Therefore, one having ordinary skill in the art would not have been motivated to vary the compositions of Malik. Moreover, it would appear that any experiments, if made, would be limited, and would include concentrations of surfactants in amounts greater than recited by Applicants. In this regard, support for the rejections relies upon asserted routine experimentation. However, following the preferred examples, and especially the Examples of Malik, such routine experimentation would involve amounts of surfactants greater than that recited by Applicants. The Examiner is reminded that the entire disclosure of Malik must be considered when using Malik in a rejection, and not merely isolated portions thereof.

Moreover, for the reasons that will be further set forth below, Applicants submit that one having ordinary skill in the art would not have combined Malik and Hagan. However, even if for the sake of argument the disclosures were combined, any such combination of Malik and Hagan would not arrive at Applicants' recited composition which includes a composition containing at least two surfactants from sodium lauryl sarcosinate, sodium monoalkyl phosphate, disodium lauryl sulfosuccinate, disodium cocoyl glutamate, α -olefin sulfonate and lauryl glucoside with a total surfactant concentration of the composition being 3 to 15 % by weight; (b) at least one hydrocolloid in a total concentration of 0.05 to 1 % by weight; and (c) at least one water-soluble salt in a concentration of 1 to 4 % by weight, respectively based on the total weight of the preparation composition.

For example, Hagan is directed to a cleansing composition which comprises, in addition to water, (a) from 10 to 30% by weight of one or more C₆ to C₁₆ acyl lactylates and (b) 5 to 25% by weight of one or more co-surfactant, such as acyl taurates, isetionates, sarcosinates and sulphosuccinates.

Especially following the disclosure of Malik, **which desires limited modification of the compositions disclosed therein**, one having ordinary skill in the art would not have been motivated to combine the diverse disclosures of Malik and Hagan. Moreover, even if the disclosures were combined, such combined composition would have a higher total surfactant concentration than that recited by Applicants.

Malik does disclose beginning at the bottom of column 6 that the viscosity can be modified with viscosity modifying agents. However, even if such viscosity modifying agents are included in the composition of Malik, there is no indication in Malik or any combination of Malik with Hagan of a composition as recited by Applicants.

Accordingly, the compositions and methods recited in Applicants' claims are not taught or suggested by any combination of the prior art used in the rejection.

Moreover, Furman is used rejecting certain claims only for its disclosure of cocoamide MEA. Therefore, whether or not one would have combined the disclosures of Malik, Hagan and Furman, Applicants' claimed subject matter would not be at hand at least for the reasons set forth above.

Still further, Scholz is used in rejecting certain claims only for its disclosure of thickeners, particularly exemplified montmorillonites. Therefore, whether or not one would have combined the disclosures of Malik, Hagan and Scholz, Applicants' claimed subject matter would not be at hand at least for the reasons set forth above.

Accordingly, the rejections of record should be withdrawn, and each of the pending claims should be indicated to be allowable.

P27849

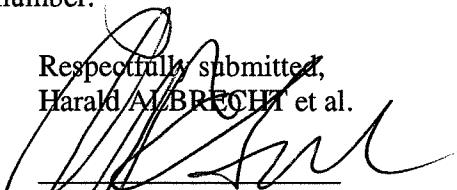
CONCLUSION

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections of record, and allow each of the pending claims.

Applicant therefore respectfully requests that an early indication of allowance of the application be indicated by the mailing of the Notices of Allowance and Allowability.

Should the Examiner have any questions regarding this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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